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July 13, 2020

VIA EMAIL ONLY: johnburgess@lawofficeofdanielsnyder.com

John Burgess
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Re: Petition for Public Records Disclosure Order
Oregon Department of Corrections
DOJ File No.: 291011-GA063-20

Dear Mr. Burgess:

This letter is the Attorney General's response to your petition for disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. Your petition asks the Attorney General to order the Oregon Department of Corrections (ODOC) to disclose any video documenting an altercation between ODOC staff and an inmate at the Eastern Oregon Correctional Institution (EOCI). For the reasons discussed below, we respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). The law is a disclosure law and exemptions from disclosure must be express. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

According to your petition, ODOC provided you with witness statements and other investigative information relating to this altercation. You also requested any video of the incident. ODOC informed you that there was a video recording in the investigative file but asserted that it was exempt from disclosure under ORS 192.355(5). You suggest the real reason ODOC withheld the video is because you believe it shows an assault upon an inmate by EOCI staff. You assert that the public interest in disclosing the video clearly outweighs the public interest in nondisclosure because the public has a compelling interest in knowing whether ODOC staff is abusing inmates and misrepresenting such altercations in its investigative reports.

We contacted Michelle Dodson, ODOC Records Officer, regarding your petition. She explained that the altercation took place in an EOCI administrative office and that there is no video of the altercation itself. She indicated that there is a security video taken from a fixed camera located approximately 100 yards across the EOCI compound from the exterior of the office. She explained that that video does not depict any activity in the office, although it does show numerous EOCI staff and medical personnel responding to the office at the time of the altercation. Ms. Dodson explained ODOC's position that the video is exempt from disclosure under both ORS 192.355(5) and ORS 192.345(23) because disclosure would reveal security measures and potential weaknesses in those measures, e.g., camera coverage and resolution. She also indicated that ODOC has a long-standing policy not to disclose fixed-camera video footage for safety and security reasons. Finally, she expressed ODOC's position that the public interest in disclosure in this instance is clearly outweighed by the public's interest in maintaining the confidentiality of ODOC security measures.

We begin by considering ODOC's claim that the video is exempt under ORS 192.355(5). That provision exempts ODOC information or records to the extent that "disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure." *Id*. In past orders considering the application of ORS 192.355(5) to video recordings within ODOC facilities, we have concluded that such surveillance:

> [S]erves a vital role in ODOC's ability to supervise those in ODOC custody and to maintain the safety of all persons in ODOC custody. If the video were released, it could ultimately be used to allow inmates to avoid surveillance, thus prejudicing ODOC's ability to carry out its functions of providing supervision for and safety of those in its custody.

Public Records Order, Jul 27, 2015, Donohue; *see also* Public Records Order, Jul 15, 2015, Walsh. In this instance, pursuant to ORS 192.422(2), we have reviewed the video at issue find that it does reveal certain security measures and limitations, the disclosure of which could permit inmates to avoid surveillance in the EOCI compound. We therefore conclude that disclosure would "substantially prejudice ODOC from carrying out the functions of the department." ORS 192.355(5).

Next, we assess whether "the public interest in confidentiality clearly outweighs the public interest in disclosure" in this instance. ORS 192.355(5). In making this determination, we note that we have previously concluded that the public interest in confidentiality will, in most instances, clearly outweigh the public interest in disclosure "[i]f disclosure would threaten or impair Corrections' ability to preserve internal order and discipline in its correctional facilities, to maintain facility security against escape or unauthorized entry, or to protect the public's safety …." *Attorney General's Public Records and Meeting Manual* at 107 (2019). After reviewing the video in this case, we conclude that its disclosure would threaten or impair the interests identified above. Moreover, because the video does not reveal any meaningful information about the altercation, it does not corroborate any of your claims or otherwise address the public interests you have identified. And we cannot discern any other public interest in the video that would

overcome the strong public interest in maintaining the confidentiality of ODOC security measures. We therefore conclude that ODOC was permitted to withhold the video under ORS 192.355(5).

ODOC also relies upon ORS 192.345(23) as a separate basis for withholding the video. That provision permits agencies to withhold "records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures taken … to protect: (a) An individual; [or] (b) Buildings or other property …" unless the public interest requires disclosure in the particular interest. *Id*. In a prior order considering this exemption, we concluded that it may apply to security camera footage in public buildings. *See* Public Records Order, May 15, 2017, Davidson (courthouse security video exempt where disclosure would permit identification of potential weaknesses in security measures and no discernable public interest in disclosure).

For the reasons discussed above, we find that disclosure in this instance would reveal ODOC security measures and potential weaknesses in those measures, thereby potentially compromising ODOC's ability to protect persons in custody, as well as ODOC personnel and facilities. And because disclosure will not enhance the public's understanding about the altercation itself, we conclude the public interest does not require disclosure in this instance. We therefore conclude that ODOC was also permitted to withhold the video under ORS 192.345(23).

For the foregoing reasons, we conclude the security video is exempt from disclosure under ORS 192.355(5) and ORS 192.345(23) and therefore respectfully deny your petition.[1]

Sincerely,



FREDERICK M. BOSS
Deputy Attorney General

FMB:pjn/DM10326256
c via email only: Michelle Dodson, ODOC

[1] This order only addresses your rights to the security video under the Public Records Law. It does not address what rights you may have to access the video under rules of civil discovery insofar as you may be seeking this information for purposes of private litigation.